REMARKS

Applicant has studied the Office Action of 30 July 2003 and offers the following remarks. These remarks are further reflective of the telephonic interview of 04 September 2003.

Before addressing the merits of the rejection, Applicant provides a summary of the invention so that the remarks are placed in their proper context. The present invention is a system that helps alleviate network congestion that is caused by gateways retrieving network announcements from a central repository. To this end, network announcements are stored at the gateways. To provide consistency between gateways, the present invention provides a tool that creates audio packages for export from the central repository to the gateways. The audio packages include a plurality of audio segments, which, when assembled, form the network announcements. The audio packages further include an index file that indicates to the gateway where particular audio segments may be located within the audio package.

Claims 47, 48, 50-61, and 63-70 were rejected under 35 U.S.C. § 103 as being unpatentable over Inniss et al. (hereinafter "Inniss") in view of Fenton.

Claims 49 and 62 were rejected under 35 U.S.C. § 103 as being unpatentable over Inniss in view of Fenton and Baber et al. (hereinafter "Baber").

Applicant respectfully traverses both rejections. For the Patent Office to establish *prima facie* obviousness, the Patent Office must show where each and every claim element is taught or suggested within the combination of references. MPEP § 2143.03.

In the present case, the Patent Office relies on Inniss for the teaching that the audio package builder/export tool is adapted to "construct an index file within the audio package that indicates to the gateway where in the audio package an audio segment may be located." Interestingly, in the Office Action of 18 March 2003, the Patent Office admitted that Inniss did not teach or suggest this element (see page 4, lines 4-7). The Patent Office reversed this admission in the present Office Action. When asked for clarification during the telephonic interview, the Examiner explained that Inniss does not explicitly teach an index, but opined that the function of the index was satisfied by the digital representation of the audio message that Inniss creates. As understood by Applicant's attorney during the interview, the Patent Office's position could be characterized as: 1) Inniss sends a message with a plurality of audio segments; 2) these are played in a predesignated sequence; and 3) thus, the order in which they are played indicates where in the audio package an audio segment may be located. Applicant's attorney

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argued that this interpretation did not meet the "index file" recited in the claim, but the Examiner disagreed.

While the Patent Office is entitled to give claim terms their broadest reasonable interpretation, the Patent Office is not allowed to give a claim element an interpretation at odds with the interpretation that would be given to the claim element by those of ordinary skill in the art. The Patent Office's interpretation ignores the "file" portion of the claim element "index file" in a manner that effectively vitiates the claim element's intended meaning. One of ordinary skill in the art would not consider an order in which audio segments were recorded for playback to be an index file. Applicant's attorney was unable to convince the Examiner of this during the telephonic interview, and restates this position in writing herein for reconsideration. Nothing in Fenton cures this deficiency. Thus, in combination the references do not teach or suggest the claim element. Applicant maintains that since this element is not shown by the combination of references, the Patent Office has not established *prima facie* obviousness.

Applicant further traverses these rejections on the ground that Fenton's gateway does not ever receive an indication from the index file that indicates where in the audio package an audio segment may be located. Fenton's gateway never analyzes any package that passes therethrough but rather merely just passes the material through without analysis. To this extent, the purported index file of Inniss never indicates to a gateway where in the audio package an audio segment may be located as required by the claim. Thus, the combination of Inniss and Fenton do not teach or suggest this claim element, and the Patent Office has not established *prima facie* obviousness.

Claim 59 has claim elements similar to those discussed above and is patentable for the same reasons. Thus, claims 47, 48, 50-61, and 63-70 are patentable over the rejection of record.

With respect to claims 49 and 62, nothing in Baber cures the deficiencies of the underlying combination, so the combination of Inniss, Fenton and Baber does not establish *prima facie* obviousness, and the claims define over the rejections of record.

New claims 71 and 72 are added depending from claim 47 which make it explicit that the gateway uses the audio package and that the index file is a distinct data structure. While Applicant does not believe that such explicit recitations are necessary to define over the rejections of record, given the position of the Examiner, this alternate claim language is provided so that the Examiner may weigh it against his interpretation of the references.
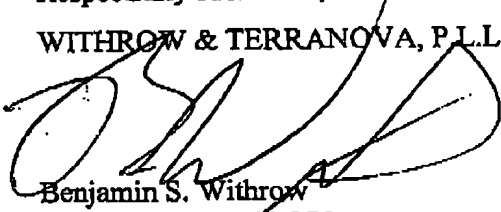
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Applicant requests reconsideration of the rejection in light of the arguments presented herein. Specifically, as admitted by the Patent Office, the references do not show the recited index file, and thus the rejections do not establish *prima facie* obviousness. Applicant requests claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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